124 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

White River Hub, LLC — Docket No. CP08-398-000

ORDER ISSUING CERTIFICATES

(Issued August 1, 2008)

1. On May 16, 2008, White River Hub, LLC (White River) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity to acquire, construct, and operate natural gas pipeline facilities located within Rio Blanco County, Colorado (White River Hub Project). Additionally, White River requests a blanket certificate under Part 284, subpart G of the Commission's regulations to provide open-access, non-discriminatory firm and interruptible transportation services and a blanket certificate under Part 157, subpart F of the Commission's regulations to perform certain construction activities and operations. We will grant the requested authorizations, as modified and conditioned below.

Background and Proposal

2. White River is a Delaware limited liability company authorized to do business in Colorado.[1] White River is a new company with no jurisdictional or non-jurisdictional operations. Upon receipt of the requested authorizations, White River will become a natural gas company within the meaning of NGA section 2(6).

3. The proposed project would connect an existing natural-gas processing plant owned by Enterprise known as the Meeker Plant, with five existing interstate natural gas pipelines: Rockies Express Pipeline, LLC (Rockies Express), TransColorado Gas Transmission Company (TransColorado), Colorado Interstate Gas Company (CIG),

[1] The members of White River are Questar White River Hub, LLC (Questar White River), a Utah limited liability company, and Enterprise White River Hub, LLC (Enterprise White River), a Delaware limited liability company. Questar White River is a wholly owned subsidiary of Questar Pipeline Company (Questar). Enterprise White River is a wholly owned subsidiary of Enterprise Products Operating, LLC (Enterprise).

Wyoming Interstate Company, Ltd. (WIC), and Northwest Pipeline GP (Northwest). The proposed facilities would also connect with Questar at facilities which Questar intends to construct under its blanket certificate authorization.[2] Upon completion of the proposed project, White River would provide up to 2,565,000 dekatherms per day (Dth/d) firm and interruptible natural gas transportation services. The total estimated cost of the proposed facilities is approximately $58.3 million. White River proposes an in-service date of November 1, 2008.

Facilities

4. White River proposes to construct approximately 5.88 miles of 30-inch diameter pipeline and associated aboveground facilities, as well as a new meter station and interconnect pipelines. White River also proposes to acquire approximately 3.8 miles of existing 36-inch diameter pipeline and associated facilities from Enterprise. Specifically, White River proposes to:

- Construct the Greasewood Meter Station. The meter station will allow White River to deliver gas to CIG, receive gas from Northwest's Parachute Lateral, and receive gas from, and deliver gas to, WIC and Questar.

- Construct approximately 5.88 miles of 30-inch diameter pipeline extending between the proposed Greasewood Meter Station and an existing 36-inch diameter pipeline to be acquired from Enterprise.

- Acquire approximately 3.8 miles of 36-inch diameter pipeline that extends from Enterprise's Meeker Plant to Rockies Express' Meeker Compressor Station. The acquisition would allow White River to connect the proposed project to Rockies Express and TransColorado via existing delivery interconnects.

- Construct a new tie-in facility that would connect the new 30-inch diameter pipeline with the existing 36-inch pipeline.

- Construct two new interconnect pipelines. The proposed Parachute Lateral interconnect consists of approximately 3,800 feet of 24-inch diameter pipeline extending from the new Greasewood Meter Station to Northwest's Parachute Lateral. The proposed CIG/WIC interconnect consists of approximately 3,000

[2] On May 21, 2008, in Docket No. CP08-405-000, Questar filed a prior notice request providing notification that it intended to construct and operate certain facilities to deliver natural gas from its existing Mainline 68 System into the proposed White River facilities (Greasewood Compressor Station facilities).

feet of 24-inch diameter pipeline extending from the new Greasewood Meter Station to the existing CIG and WIC pipelines.

Markets and Services

5. White River states that it held an open season from August 27, 2007, through September 14, 2007, which resulted in White River's entering into precedent agreements with Enterprise and Questar for an aggregate of 2,000,000 Dth/d for 20 years. [3] White River states that following the open season, it entered into executed binding precedent agreements with four other customers for an additional 565,000 Dth/d of capacity.[4]

6. White River proposes to offer firm and interruptible transportation services. For interruptible transportation service, White River proposes rates based on a 100 percent load factor. White River's proposed recourse rates reflect rate of return on equity of 13 percent and an overall rate of return of 10.30 percent.

7. White River also proposes to offer a firm residue gas service under Rate Schedule RGS. White Rivers states that any owner of residue gas delivered from the tailgate of a processing plant directly into White River will have the option to select either a traditional firm transportation service under Rate Schedule FT or service under Rate Schedule RGS. White River states that these two services are intended to offer firm shippers the maximum range of alternatives to move their gas volumes into the interstate pipeline market via the proposed facilities.

8. Under Rate Schedule RGS, an owner of residue gas delivered from the tailgate of a processing plant directly into White River's proposed facilities will have the option to either contract, nominate, and schedule its firm service on its own behalf, or have the gas processing facility operator act as its agent. In the latter case, the gas processing customer would execute an agency appointment agreement with the processing facility operator/gas service administrator, and the gas service administrator would execute a form of service agreement with White River on behalf of one or more such gas processing customers who would continue to hold title to the gas.

9. White River states that the Rate Schedule RGS option recognizes that a processing plant has a fixed maximum output which is allocated among residue gas owners, and

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[3] Enterprise has committed to 1,500,000 Dth/d, Questar to 500,000 Dth/d.

[4] The capacity and duration of each agreement are as follows: Williams Gas Marketing Inc., 500,000 Dth/d for 10 years; Nexen Marketing USA Inc., 100,000 Dth/d for 10 years, 4 months; WIC, 40,000 Dth/d for 12 years; and Noble Energy Inc., 25,000 Dth/d for 11 years, 6 months.

provides the flexibility for the gas service administrator to schedule capacity in proportion to each processing customer's volumes, rather than have each customer contract for the maximum capacity it might need. White River avers that such an arrangement eliminates the need to overbuild pipeline capacity and maximizes efficient use of the existing capacity.

Interventions and Protests

10. Notice of White River's application was published in the *Federal Register* on June 2, 2008 (73 Fed. Reg. 31,450). Timely, unopposed motions to intervene were filed by BP America Production Company, jointly with BP Energy Company (BP Energy), Marathon Oil Company, and WIC.[5]

11. BP Energy filed a protest raising several issues concerning White River's proposed tariff provisions. White River filed an answer to BP Energy's protest and BP Energy filed an answer, to which White River filed a further answer. Concurrent with White River's second answer, BP Energy filed a notice of withdrawal of its protest and answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits responses and replies to a protest or an answer unless otherwise ordered by the decisional authority.[6] However, even though BP Energy has withdrawn its protest, we will still accept the answers into the record because White River agrees to make various changes to its proposed tariff to address BP Energy's concerns.[7]

Discussion

12. Since White River proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, White River's proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

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[5] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

[6] 18 C.F.R. § 385.213(a)(2) (2008).

[7] BP Energy's withdrawal will be effective 15 days from filing under Rule 216 of the Commission's regulations if no motion in opposition to the withdrawal is filed. 18 C.F.R. § 385.216 (2008). The Commission finds good cause to waive Rule 216 to the extent necessary to allow BP Energy's withdrawal of its protest to become effective on the date this order is issued.

A. Application of the Certificate Policy Statement

13. The Commission's Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.[8] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of unnecessary exercise of eminent domain or disruptions of the environment.

14. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to support the project financially without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only after a proposed project's benefits outweigh its adverse effects on economic interests will the Commission proceed to complete the environmental analysis, in which other interests are considered.

15. White River's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. White River is a new entrant in the natural gas pipeline market and has no existing customers. Therefore, there will be no subsidization.

16. The proposed White River Hub project will have no adverse impact on existing customers or services since White River has no current customers or services. The Commission is also satisfied that there will be no negative impact on other interstate pipelines or their captive customers as the proposed project is designed to create a trading hub to bring new supplies to numerous markets rather than to replace any existing service. Further, as discussed below, White River's proposed project will provide a link

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[8] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

between growing natural gas production in the area and multiple pipelines, thereby enhancing the sources of gas for the interconnecting pipeline customers.

17. White River has made efforts to minimize impacts on landowners and the surrounding environment by co-locating 86 percent of the new 30-inch diameter, 5.88-mile long pipeline along existing pipeline rights-of-way. White River is also making efforts to minimize its impacts through the use of existing facilities, proposing to acquire the existing residue-gas pipeline facilities instead of constructing redundant facilities and siting its proposed Greasewood Meter Station and interconnecting pipelines adjacent to existing roads and surface facilities.

18. The project will require 67 acres of permanent easements. Ninety-nine percent of the construction will occur on land under the jurisdiction of the Bureau of Land Management (BLM) – White River Field Office. The remaining facilities are located on land owned by EnCana Oil & Gas (USA), Inc. Thus, White River does not anticipate needing to obtain any easements through the use of eminent domain.

19. The proposed project will facilitate the aggregation of natural gas produced in the Piceance Basin in order to serve multiple downstream markets. There is a need for increased pipeline capacity to access gas supplies produced in the Rocky Mountain region. The proposed project will establish a new market center for this producing region. It will also encourage gas development and enhance the liquidity and reliability of natural gas markets to the benefit of producers, marketers, and other transporters. Further, White River has executed precedent agreements for the entire capacity of the proposed project.[9] Thus, based on the benefits the White River project will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity requires approval of White River's proposal.

B. <u>Rate Issues</u>

20. As recourse rates, White River is proposing a firm transportation service rate of \$0.36686 per Dth per month under Rate Schedule FT and a firm residue gas service rate of \$0.36686 per Dth per month under Rate Schedule RGS. White River is also proposing

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[9] Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after White River executes contracts that reflect the levels and terms of service represented in its precedent agreements. *See e.g.*, *Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, at P 21 (2002).

an interruptible transportation service rate of $0.01206 per Dth under Rate Schedule IT, based on a 100 percent load factor derivative of the firm transportation rate. White River states that the proposed cost-based rates were developed consistent with the Commission's policy related to the straight fixed variable methodology.

21. White River has executed binding precedent agreements with a total of six customers. Two of the customers are considered foundation shippers, having submitted bids for a minimum of 500,000 Dth/d of firm delivery capacity each for a minimum term of 20 years. The foundation shippers will receive a discount to the recourse rate consistent with the term and volume commitment of their precedent agreement. White River also has received additional binding bids from four non-foundation shippers for an aggregate total of 565,000 Dth/d of capacity. The four non-foundation shippers will be charged the proposed recourse rate.

1. Recourse Rate

22. In developing the proposed recourse rates, White River has used a capital structure of 60 percent equity and 40 percent debt with a 13 percent return on equity and a 6.25 percent cost of debt, resulting in an overall rate of return of 10.30 percent. White River asserts that the proposed 13 percent return on equity is reasonable and consistent with the allowed rates of return on equity that the Commission has granted in construction projects for other pipelines with similar capital structures.[10]

23. White River proposes to depreciate its new gas transmission plant using a 3 percent straight-line depreciation rate based on a 33-year useful life. White River states that the 33-year useful life, and corresponding depreciation rate, is consistent with the current rate used by Questar. Further, White River states that other than lost and unaccounted for volumes, there will be no fuel charge associated with transporting natural gas on the proposed facilities.

24. The Commission has reviewed White River's proposed cost of service, allocation and rate design, including its proposed overall rate of return of 10.30 percent and depreciation rate of 3 percent, and finds that they reasonably reflect current Commission

[10] *Citing Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 (2006) (initial order approving 13 percent rate of return on equity); *Cheniere Corpus Christi Pipeline Co.*, 111 FERC ¶ 61,081 (2005) (approving initial rates reflecting 14 percent rate of return on equity).

policy.[11] Accordingly, we will approve the proposed initial recourse rates for the White River Hub Project.

2. Firm Residue Gas Service

25. A gas processing plant has a fixed maximum output that is allocated, in varying quantities, among residue gas owners depending on production and gathering operations upstream of the processing plant. White River states that Enterprise's residue gas owners indicated a strong desire to have their residue gas redelivered from the processing plant into White River on a seamless basis. White River proposes Rate Schedule RGS in order to provide the flexibility for a Gas Service Administrator to schedule Enterprise's capacity in proportion to each residue gas owner's volumes, rather than have each owner contract with White River separately for the maximum capacity it might need. White River asserts that such an arrangement avoids overbuilding pipeline capacity and makes efficient use of existing capacity.

26. Under Rate Schedule RGS, a Gas Service Administrator would execute the tariff form-of-service agreement on behalf of one or more of the residue gas owners (Gas Processing Customers), each of whom would be required to execute an Agency Appointment Agreement (Agency Agreement) under White River's proposed tariff.[12] Under Rate Schedule RGS, a Gas Processing Customer could elect to contract, nominate, and schedule its firm service entitlements on its own behalf, or it could elect a Gas Service Administrator to acquire and manage firm transportation service entitlements on its behalf.

27. Primary and secondary delivery points for Rate Schedule RGS would be available and designated on the same basis as for Rate Schedule FT service. However, since Rate Schedule RGS is only available for transportation from a processing plant directly connected to the White River system, the designation of flexible receipt points is not permitted. Title to gas shipped under Rate Schedule RGS will be held by the shipper executing the agreement or by the Gas Processing Customer that has executed an Agency Agreement.

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[11] *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234, at P 55 (2008) (finding a 10.19 percent rate of return and a 2.86 percent depreciation rate reasonable).

[12] The Agency Agreements would be appended to the Gas Service Administrator's RGS service agreement and submitted to White River. The identities of the Gas Processing Customers served by the Gas Service Administrator would be posted by White River on its web site, and identified in White River's Index of Customers as required by the Commission's regulations.

28. The Commission finds White River's proposed Rate Schedule RGS is a narrowly tailored firm service option that serves the public interest by providing Enterprise's existing owners of residue gas an alternative service plan. They can elect to receive traditional firm service under White River's proposed Rate Schedule FT. Rate Schedule RGS is specifically tailored to recognize the operating characteristics of a processing plant and the physical limits on the operation of the plant's residue line, while at the same time providing shippers with flexibility. Although the proposed residue gas service under Rate Schedule RGS provides for the operator of a processing plant to act as shipper and agent for the owners of residue gas, such service will be restricted to residue gas from directly connected processing plants. Under these limited circumstances, there is minimal potential for frustration the Commission's open-access policies. Thus, we will approve White River's proposed Rate Schedule RGS.

C. Tariff Provisions

29. White River proposes to offer firm and interruptible transportation service on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. We find White River's proposed tariff generally complies with Part 284 of the Commission's regulations; however, certain provisions are discussed further below.

1. Permanent Release of Capacity

30. Section 6.14(b) of White River's proposed tariff states that White River is not obligated to amend a releasing shipper's service agreement to reflect the permanent release of capacity unless the capacity is released at the maximum rate. To address concerns raised by BP Energy, White River revised its proposed tariff to state that a permanent release would include a release of capacity for the remaining duration of the contract at a rate no less than the rate the releasing shipper was paying. The Commission finds that the proposed modification is acceptable.

2. Curtailment and Interruption Liability

31. As written, section 9.3 of White River's proposed tariff limits White River's damage liability to instances of gross negligence or worse conduct. BP Energy pointed out that while section 9.3 uses a gross negligence standard; section 19 uses a simple negligence standard which is consistent with Commission precedent.[13] In response, White River states that the inclusion of the existing section 9.3 language was a clerical oversight and agreed to amend the tariff language to make it clear that (a) White River

[13] *See* BP Energy's protest at 10-11.

would be liable for direct damages caused by its negligence; but (b) White River would not be liable for indirect, incidental, or consequential damages unless caused by gross negligence, misfeasance, or willful misconduct. The Commission finds that the proposed modification is acceptable.

3. Reservation Charge Credits

32. Section 11.12(d) of the proposed tariff reads as follows:

> White River shall not be obligated to adjust the Reservation Charge under any contract . . . when White River's failure to confirm Nominations on any Day equal to at least 100% of the contract RDC [reserved daily capacity]:[14]
>
> i. is the result of the conduct of Shipper or the upstream or downstream operator of the facilities at the Receipt or Delivery Point, respectively; or
>
> ii. occurs either (a) within ten (10) Days following a force majeure event as contemplated by § 20 of these General Terms and Conditions, or prior to the date White River has or should have, in the exercise of due diligence, overcome the force majeure event, whichever occurs first.

33. The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a non-force majeure or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount. This is because the failure was due to the pipeline's conduct and was within its control.[15] Section 11.12(d)(ii), addresses reservation charge credits during force majeure events and is consistent with Commission precedent. However, section 11.12(d)(i) applies to non-force majeure events. White River reasons this section is appropriate because the disruption in service is outside of its control. We disagree. A pipeline operator is responsible for operating its system. A disruption that is considered a non-force majeure event does not excuse the pipeline operator from its obligation to deliver its scheduled volumes. Thus, White River must provide full reservation charge credits under these circumstances.

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[14] In response to concerns expressed by BP Energy, White River has agreed to change the threshold for adjusting the Reservation Charge from a failure to confirm Nominations of 98 percent of the contract RDC to 100 percent of the contract RDC.

[15] *SG Resources Mississippi, LLC*, 122 FERC ¶ 61,180, at P 6 (2008). *See also Tennessee*, 76 FERC ¶ 61,022 at 61,086-89.

4. **Gas Quality**

34. Under section 13.8 of the proposed tariff, White River will not be required to accept gas that is of a quality inferior to that required by shippers or a third party at any point of delivery on White River's system. BP Energy expressed a concern that this provision is inconsistent with Commission policy.[16] In response, White River proposes to modify the requirement to state that it will not be required to schedule delivery of gas into its system that fails to satisfy the downstream pipeline's or third party's gas quality standards.

35. The Commission has recognized that in furtherance of its goal to encourage development of a seamless interstate pipeline grid, pipelines should have the tariff flexibility to ensure deliveries to interconnecting pipelines.[17] Tariff provisions that give the pipeline too much discretion to change its gas quality standards with inadequate notice or explanation to customers, however, undermines the certainty regarding a pipeline's gas quality standards that the Commission seeks to achieve.[18] We find that as originally proposed section 13.8 is too broad, too vague, and gives White River too much discretion to impose quality restrictions of its shippers.[19] White River's proposed revision, however, remedies this problem. Thus, the Commission finds modified section 13.8 is acceptable subject to White River's moving it to a more appropriate section of its tariff.

5. **Segmentation**

36. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that

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[16] In its answer, BP Energy recommends that White River adopt an approach similar to one used by Rockies Express Pipeline in its proceeding in Docket No. CP06-354-000 that addresses the issue in the pipeline's scheduling section instead of the gas quality section. *See* BP Energy's July 15, 2008 answer at 2-3.

[17] *See Gulf South Pipeline Co.,* 120 FERC ¶ 61,076, at P 41 (2007).

[18] *See Natural Gas Interchangeability, Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325, at P 24 (2006).

[19] *See Indicated Shippers v. Columbia Gulf Transmission Co.,* 106 FERC ¶ 61,040, at P 35-38 (2004).

segmentation is operationally feasible. White River requests waiver of the Order No. 637 segmentation requirements in section 284.7(d), contending that segmentation is not feasible because it requires multiple receipt and delivery points situated between the ends of the pipeline system. White River states that for segmentation to work, a contract path must be divided into multiple segments each of which would be defined by a receipt and delivery point. Thus, it asserts that because all receipt and delivery points on its proposed facilities are situated at the extreme ends of the pipeline segmentation is not feasible.

37. The Commission will generally grant a waiver of section 284.7(d) where segmentation is not feasible on the proposed facilities.[20] We find that the configuration and the operational limitation of White River's proposed facilities precludes segmentation of it capacity. Thus, the requirements of section 284.7(d) do not apply to White River. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to White River.

6. <u>Implementation of NAESB Standards</u>

38. The Commission adopted, in Part 284 of its regulations, various standards for conducting business as promulgated by the North American Energy Standards Board (NAESB). These standards govern nominations, allocations, balancing, measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. White River states that its pro forma tariff complies with the requirements of Order No. 637 and with current NAESB standards.

39. White River requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations which require interstate pipelines to comply with the electronic data interchange (EDI) standards established by NAESB. White River states that it expects to meet all customers' information requirements with regard to Electronic Data Interchange/Electronic Delivery Mechanisms (EDI/EDM) and Flat File/Electronic Delivery Mechanism (FF/EDM). It requests, however, a limited waiver in the form of an extension of time to comply with this standard to allow it to postpone implementation until 90 days following White River's receipt of a request to send information via EDI/EDM. Consistent with Commission precedent, we will grant White River's request

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[20] *See e.g.*, *Bobcat Gas Storage*, 116 FERC ¶ 61,052, at P 37 (2006); *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 44 (2004); *Egan Hub Partners, L.P.*, 98 FERC ¶ 61,284 (2002); *Clear Creek Gas Storage Company*, 96 FERC ¶ 61,071 (2001).

for an exemption of the EDI standards, but will require White River to implement those standards within 90 days following the receipt of such a request.[21]

40. The Commission finds that White River's proposed service terms and conditions generally satisfy the Commission's regulations and policies, the Commission directs White River to file actual tariff sheets consistent with the following directives at least 30 days but no more than 60 days, prior to the commencement of its new services.[22] As discussed above, we will grant the requested waivers subject to White River, when it files its actual tariff sheets, filing a cross-reference listing each required NAESB standard, identifying the specific location of each standard in the tariff, and noting whether it incorporated the standard verbatim or by reference. To the extent a NAESB standard does not apply because of unique system characteristics or other operational aspects, the Commission does not require requests for specific waivers of such standards.[23] However, in accordance with our ruling in *Trans-Union*, if circumstances change and a standard becomes applicable to White River's operations, then White River must file to modify its tariff to comply with the standard.

D. <u>Accounting</u>

41. White River proposes to calculate its Allowance for Funds Used During Construction (AFUDC) based on its proposed debt and equity capital structure. Consistent with Commission precedent, we will require White River to capitalize the actual costs of borrowed and other funds for construction purposes not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved.[24] This will ensure that the amounts of AFUDC are properly capitalized in this project consistent with the Commission's requirements for newly created companies approved in other cases.

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[21] *See Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 (2005), *Saltville Gas Storage Co. LLC*, 109 FERC ¶ 61,200 (2004); *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

[22] White River is advised to ensure that page number references in its Table of Contents accurately correspond with referenced contents.

[23] *See Trans-Union Interstate Pipeline, L.P.*, 104 FERC ¶ 61,315, at P 20 (2003) (*Trans-Union*).

[24] *See e.g., Cheyenne Plains Gas Pipeline Company*, 105 FERC ¶ 61,095 (2003), *Mill River Pipeline, LLC*, 112 FERC ¶ 61,070 (2005), and *Ingleside Energy Center, LLC.*, 112 FERC ¶ 61,101 (2005).

E. Environmental

42. On November 9, 2007, the Commission staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed White River Hub Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. This included all landowners who were potential rights-of way grantors, whose property was a candidate for temporary use for project purposes, or who owned homes within distances defined in the Commission's regulations of certain aboveground facilities.

43. An environment assessment (EA) was prepared for the proposed project and placed in the record in Docket No. CP08-398-000 on July 9, 2008.[25] The analysis in the EA included the project's purpose and need, geology, soils, water resources, wetlands, vegetation, fish and wildlife, federally listed species, land use, recreation, visual resources, cultural resources, air quality and noise, safety, socioeconomics, cumulative impacts, and alternatives.

44. In response to the NOI, a comment was filed by the U.S. Fish and Wildlife Service's Western Colorado Field Office (FWS). The FWS letter included a list of threatened and endangered species that may be present in the project area, and discussed the requirements of the Migratory Bird Treaty Act and Bald Eagle Protection Act.

45. The FWS also raised concerns about potential water depletions within the Colorado River Basin that may affect the bonytail, humpback chub, Colorado pikeminnow, and razorback sucker. The EA determined that although the bonytail, humpback chub, and razorback sucker occur in portions of the Green River and the Colorado pikeminnow occurs in the White River, these populations are located over ten miles downstream of the project area.[26] Construction of the proposed facilities, however, could cause increased sedimentation and turbidity in downstream waterbodies associated with erosion, which has the potential to affect downstream fish populations. Thus, White River cannot commence construction until the Commission receives a Biological Opinion from FWS regarding project-related water depletion issues in the Colorado System.[27]

[25] The EA also discussed the potential impacts associated Questar's prior notice filing in Docket No. CP08-405-000 for the Greasewood Compressor Station. *See supra* note 2.

[26] *See* EA at 48-50.

[27] *See* Environmental Condition 9.

46. Several issues identified during the pre-filing review were resolved prior to White River filing its application. For instance, White River agreed to relocate the Greasewood Meter Station compound about 3,600 feet to the west of its originally-proposed location as a result of the BLM's concerns with impact on greater sage-grouse habitat. Additionally, because of the prevalence of known fossil localities in the locally exposed Green River and Uinta Formations, White River agreed to have a BLM-approved paleontologist monitor all excavations into underlying rock formations so that significant invertebrate and vertebrate fossil materials could be quickly identified for recovery. In response to concerns regarding the spread and long-term control of noxious weeds, White River also agreed to monitor the pipeline ROW and all project-related disturbed areas for noxious weeds every 2 years, and to take appropriate action to control weeds for the life of the facilities.

47. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with White River's application and supplements and the conditions in the Appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

48. Any state or local permits issued with respect to facilities subject to the jurisdiction of this Commission must be consistent with the conditions of any certificates issued by this Commission authorizing construction and operation of those facilities. The Commission's practice is to encourage cooperation between interstate pipelines and local authorities. This does not mean, however, that state and local agencies, through application of state of local law, may prohibit or unreasonably delay the force and effect of a certificate issued by this Commission.[28]

F. <u>Blanket Certificates</u>

49. White River requests issuance of a Part 284, subpart G, blanket certificate in order to provide open-access transportation services. White River filed a pro forma Part 284 tariff to provide open-access transportation services. Since a Part 284 blanket certificate is required for White River to offer these services, we will grant White River a Part 284 blanket certificate, subject to the conditions imposed herein.

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[28] *See e.g., Schneidewind v. ANR Pipeline Co.,* 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n,* 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

50. We will also grant White River a Part 157, subpart F blanket certificate. The subpart F blanket certificate gives a natural gas company NGA section 7 authority to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities.

G. Conclusion

51. For the reasons set forth herein we find, subject to the conditions below, that the public convenience and necessity requires issuance of the requested certificates under NGA section 7(c) for the proposed White River Hub Project. Thus, we grant the requested authorizations to White River.

52. The Commission on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to White River under NGA section 7 authorizing the construction, acquisition, and operation of natural gas facilities, as more fully described in this order and the application.

(B) A blanket certificate under Part 157, subpart F of the Commission's regulations is issued to White River authorizing it to construct and operate certain facilities, as defined in and under the terms and condition of that section.

(C) A blanket certificate under Part 284, subpart G of the Commission's regulations is issued to White River authorizing it to provide open-access transportation services.

(D) The certificate issued in Ordering Paragraph (A) is conditioned upon White River's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (d), (e), and (f) of section 157.20 of the regulations.

(E) White River shall execute contracts that reflect the levels and terms of service represented in its precedent agreements prior to commencing construction of the proposed facilities.

(F) The facilities authorized in this order shall be constructed and made available for service within one year of the issuance of this order, in accordance with section 157.20(b) of the Commission's regulations.

(G) The certificate issued in Ordering Paragraph (A) is conditioned on White River's compliance with the environmental conditions set forth in the Appendix to this order.

(H) Waiver is granted of section 284.12(a)(1)(iv) of the Commission's regulations to exempt White River from compliance with the electronic data interchange (EDI) standards established by NAESB, subject to the conditions discussed herein.

(I) Waiver is granted of segmentation requirements of section 284.7(d) of the Commission's regulations.

(J) White River shall file actual tariff sheets not less than 30 days or more that 60 days that comply with the requirements contained in the body of this order, including the cross-reference to reflect the location of each NAESB standard in its tariff, and are otherwise consistent with its pro forma tariff in accordance with the NGA and Part 154 of the Commission's regulations prior to commencement of service.

(K) White River shall adhere to the accounting requirements discussed in the body of this order.

(L) White River shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies White River. White River shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(M) White River's and BP Energy's answers are accepted into the record.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

<u>Environmental Mitigation Measures</u>

1. White River Hub, LLC (White River) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the Commission Order. White River must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification**.

2. The Director of the OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

   a. the modification of conditions of the Commission Order; and
   b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from the project construction and operation.

3. **Prior to any construction**, White River shall file affirmative statements with the Secretary, certified a by senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, White River shall file with the Secretary detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facility approved by the Commission Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference, locations designated on these alignment maps/sheets.

Applicant's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. White River's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline or other facilities to accommodate future needs or to acquire a ROW for a pipeline to transport a commodity other than natural gas.

5. White River shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas must be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP **before construction in or near that area**.

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

a. implementation of cultural resource mitigation measures;
b. implementation of endangered, threatened, or special concern species mitigation measures;
c. recommendations by state regulatory authorities; and
d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. White River shall employ at least one EI. The EI shall be:

a. responsible for monitoring and ensuring compliance with all mitigative measures required by the Commission Order and other grants, permits, certificates, or authorizing documents;
b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;

c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
d. a full-time position, separate from all other activity inspectors;
e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
f. responsible for maintaining status reports.

7. White River shall file updated status reports prepared by the head EI with the Secretary on a **weekly** basis **until all construction and restoration activities are complete**. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of the projects, work planned for the following reporting period, and any schedule changes;
b. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
d. the effectiveness of all corrective actions implemented;
e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Commission Order, and the measures taken to satisfy their concerns; and
f. copies of any correspondence received by White River from other federal, state, or local permitting agencies concerning instances of noncompliance, and White River's response.

8. Within 30 days of placing the certificated facilities in service, White River shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
b. identifying which of the certificate conditions White River has complied with or would comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

9. White River shall not begin construction activities until:

   a. the staff receives a Biological Opinion (BO) from the U.S. Fish and Wildlife Service (FWS) regarding project-related water depletion issues in the Colorado River system; and
   b. White River has received written notification from the Director of the OEP that construction may begin.

10. White River shall defer construction of any newly identified project facilities or work areas **until**:

    a. White River files with the Secretary the Bureau of Land Management's (BLM) and State Historic Preservation Officer's (SHPO) comments on the need to conduct cultural resource surveys of these areas and, if surveys are required, files a supplemental survey report and the BLM's and SHPO's comments on the supplemental survey report;
    b. White River files any BLM response to White River's May 7, 2008 correspondence; and
    c. the Director of OEP reviews and approves all reports and notifies White River in writing that it may proceed.

    All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.**"